

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES E. WEST,	§
	§ No. 299, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0103022188
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 1, 2006

Decided: February 1, 2007

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 1st day of February 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James E. West, filed an appeal from the Superior Court's May 18, 2006 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In November 2001, West pleaded guilty to Robbery in the Second Degree, Conspiracy in the Second Degree and Possession of a Firearm During the Commission of a Felony. He was sentenced to a total of

10 years of Level V incarceration, to be suspended after 3 years for 7 years of decreasing levels of supervision.¹

(3) In September 2004 and again in February 2005, West was found to have committed a violation of probation (“VOP”). Rather than appealing these orders, West moved for a modification of his sentence, which the Superior Court denied. In January 2006, West filed the instant motion for postconviction relief, with subsequent amendments, which the Superior Court also denied, except that West was given credit for 59 days of Level V time previously served.

(4) In this appeal, West argues that the Superior Court abused its discretion by rejecting his postconviction claims that a) he had no opportunity to speak before his VOP sentence was imposed; b) the Superior Court exhibited a closed mind when it sentenced him; c) his sentence was based upon false information; d) his counsel was ineffective by failing to examine his prior convictions; and e) his sentence was excessive. West also argues that the Superior Court should have ordered him to show cause and prejudice rather than denying his postconviction motion on procedural grounds.²

¹ In 2002 and 2004, West’s sentences were modified to give him credit for 210 days previously served at Level V and to permit him to serve the Level IV portion of his sentence at either home confinement or work release.

² Super. Ct. Crim. R. 61(i) (3) (A) and (B).

(5) The Superior Court properly denied West's claims. Not only were the claims procedurally barred because West failed to assert them in the proceedings leading to the judgment of conviction,³ the transcript of the VOP hearing at issue in this appeal reflects that West's claims are without any factual support. West's claim that the Superior Court should have ordered him to show cause and prejudice in order to avoid the procedural bar is without any legal support. It is the movant's burden to demonstrate that the procedural bars should not be applied. To the extent West argues that his failure to raise his claims on direct appeal is due to the ineffective assistance of his counsel, that argument also must fail. It was never presented to the Superior Court in the first instance and we decline to consider it for the first time in this appeal.⁴

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

³ Super. Ct. Crim. R. 61(i) (3).

⁴ Supr. Ct. R. 8.